

REMARKS

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe the subject matter which applicant regards as the invention.

Claims 1 – 13 were rejected under 35 U.S.C. 102(e) as being anticipated by Kawai et al. (U.S. Publication No. 2006/0195223), hereinafter referred to as the "cited application". The rejection is traversed for the following reason.

The present application was filed on January 10, 2006 and claims priority to PCT application No. PCT/JP04/09518 filed on June 29, 2004, U.S. Provisional Application No. 60/486,543 filed on July 11, 2003, and JP 2003-320107 filed on September 11, 2003. The cited application makes identical priority claims. To establish a rejection under 35 U.S.C. 102(e), the invention must be described in a published patent application that is: (1) filed before the invention by the applicant, and (2) by another. The cited patent application publication fails on both of the above grounds.

The cited application was not filed before the invention by the applicant, and is therefore not available as a reference against the present application.

Both the present application and the cited application have identical priority dates. As such, assuming the invention date of the present application is the priority date (this fact is not herein conceded), the invention of the present application was invented concurrently with the filing of the cited application. Thus, the cited application was not filed "before" the present application and is not prior art against

the present application.

For this reason alone, the cited application does not anticipate the claimed invention recited in the present application.

The cited application was not invented or filed "by another", as the term has been interpreted under 35 U.S.C. 102(e).

Section 2136.04 of the MPEP defines the term "by another", as used in 35 U.S.C. 102(e), as meaning that the application and the cited document have different inventive entities. The inventive entities are "different if not all inventors are the same". MPEP 2136.04. The presence of different inventive entities creates a *prima facie* case that the cited document is "by another".

The present application and the cited application list Masakazu Kawai and Yasushi Ikeuchi, both of Wako-shi Japan, as the sole inventors. No other inventors are listed for either the present application or the cited application. As such, all of the inventors on both the present application and the cited application are the same. Accordingly, the present application and the cited application do not have different inventive entities.

Thus, a *prima facie* case that the cited application is "by another" has not been established. Accordingly, it is submitted that a showing under 37 C.F.R. 1.132 that any invention disclosed but not claimed in the cited application was derived from the inventor of the present application and is thus not "by another" is not required. Rather, the listed inventors on the present application and the cited application establish that the cited application is not "by another", as is required of a reference under 35 U.S.C. 102(e).

For this further reason, the cited application does not anticipate the claimed

invention recited in the present application.

Conclusion

It is therefore submitted that the Kawai application is not available as a prior art reference against the present application. Accordingly, the anticipation rejection of claims 1 – 13 based on the Kawai application lacks merit. Withdrawal of the rejection is requested. As the only rejection of the claims was made based on the Kawai application, it is submitted that all claims are presently allowable.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 18-0160, our Order No. SAT-16401.

Respectfully submitted,

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